GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT.

Labour Dispute: Industrial Dispute between the Workmen and the Management of West Coast Paper Mills Ltd., Dandeli, North Kanara.

Award of the Labour Court, Bangalore—Published.

Read the following Papers:

(1) Letter No. AIT/736/72-73, dated 2nd September 1972 from Sri K. N. Patil, Presiding Officer, Industrial Tribunal, Bangalore.

BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL BANGALORE.

Dated this 31st day of August 1972.

Present :

Shri K. N. Patil, LL.B., ... *Presiding Officer*

A. I. D. No. 5/72

First Party		*Second Party*
Workmen represented by the Secretary, The West Coast Paper Mills Employees Union Township, Dandeli, North Kanara.	*Vs.*	The Management, West Coast Paper Mills Ltd., Dandeli, North Kanara.

APPEARANCES

For I Party : Sri M. C. Narasimhan

For II Party : Sri V. N. Apte

AWARD

The Government of Mysore being of opinion that an Industrial [illegible] existed between the Workmen and the Management of West Coast Paper Mills Ltd., Dandeli (N. K.) referred the said dispute under Section 10 (1) (d) of the Industrial Disputes Act,

under their No. FCL 796 LLD 68, dated 7th February 1969 for adjudication to the Industrial Tribunal, Bangalore. The points of dispute enumerated in the order of reference are:

1. Is the management of the West Coast Paper Mills Ltd., Dandeli justified in transferring their workmen outside Dandeli, and in particular to the Andhra Pradesh Paper Mills Limited, Rajmundri?
2. Are the workmen of the West Coast Paper Mills Limited, Dandeli justified in demanding that the Company should discontinue the system of transferring the workmen outside Dandeli? If not to what other relief are the workmen entitled?
3. Are the workmen of the West Coast Paper Mills Limited, Dandeli justified in demanding that the order dated 7th August 1968 of the Factory Manager, West Coast Paper Mills Limited, Dandeli directing Sri V. Y. Patnekar, T. No. 114, Pulp Mills to proceed to Rajmundri forthwith, should be withdrawn? If not, to what relief, if any, is the affected workman, entitled?
4. Are the workmen of the West Coast Paper Mills Limited, Dandeli justified in demanding that contract labour system prevailing in the company be abolished? If not, to what other relief are the workmen entitled to?

2. The case was numbered as I. D. 6/69 on the file of the Industrial Tribunal, Bangalore. The Government of Mysore by their Order No. FCL 277 LLE 70, dated 3rd February 1972 have withdrawn the case from the file of the Industrial Tribunal, Bangalore and have transferred it to this Tribunal under Section 33-B of the Industrial Disputes Act for disposal. It was thereafter that the case came to be registered as A.I.D. 5/72 on the file of this Tribunal.

3. The I party consisting of the workmen of the West Coast Paper Mills represented by the Secretary of the West Coast Paper Mills Employees' Union, has filed its statement of claims on 5th April 1969 and has raised these contentions:—

The Management is employing workmen through Contractors on jobs for the work of the Factory, and they are essential and perennial in nature. The workmen demand that the contract

system of labour should be abolished. This contract of labour is intended to deprive the workmen from the benefits of higher wages and other emoluments and benefits and protection of labour laws. Hence, the contract system of labour prevailing in the II party company should be abolished as it is prejudicial to the interests of the workmen. The company is transferring their workmen out side Dandeli and it is illegal and unjust. It is not warranted by the provisions in the standing orders and it causes much inconvenience to the workmen. The workmen demand that they should not be transferred outside Dandeli. One of their workman Shri V. Y. Patnekar has been transferred to Rajmundri in Andhra Pradesh. His transfer is illegal and it should be withdrawn. The workmen have prayed for an award that the Mills should not transfer them outside Dandeli, that the transfer of Shri V. Y. Patnekar now made to Rajmundri should be cancelled and the Contract Labour System prevailing in the company should be abolished.

4. The II party company has filed its counter on 11th July 1969 and has raised these objections :

With regard to the transfer of workmen outside Dandeli, the company states that none of their workmen have been transferred outside Dandeli without their consent. Shri V. Y. Patnekar has also been transferred from Dandeli to Rajmundri (in Andhra Pradesh) only with his consent. Now that Shri V. Y. Patnekar has been transferred from the II party Mills and has gone to Rajmundri, this Tribunal has no jurisdiction to adjudicate on his transfer. The Contract Labour System is prevailing from the very commencement in the II party Mills. It is working smoothly and efficiently. There are no reasons to abolish it.

5. The I party Union filed its reply statement on 2nd August 1969 and reiterated the contentions which it had already put forth in its claim statement.

6. The following issues were framed on 30th August 1969 in addition to the points of dispute scheduled in the order of reference :—

I. Whether there is no industrial dispute between the parties justifying the reference under Section 10 (1) (d) of the Industrial Disputes Act ?

II. Whether the II party Management is estopped from raising a plea regarding the non-existence of an Industrial dispute as alleged by the I party workmen?

III. Whether the dispute relating to the transferred employees cannot be referred to by the State Govt.?

IV. Whether the reference is invalid and incompetent and beyond the competence of the State Government for the reasons alleged in paras 2 to 8 of the Counter Statement ?

V. Whether this Tribunal has no jurisdiction to make an ward in respect of the demand of the I party for retransfer of the workmen referred to in the annexure to the Claim Statement, to the II party Factory at Dandeli ?

VI. Whether the workers concerned in this reference have consented or acquiesed to the transfers made by the II party Management and if so, whether the I party or the concerned workmen are estopped from challenging the validity and the legality of the transfers made by the II party?

VII. Whether Sri V. Y. Patnekar was transferred to Andhra Pradesh Paper Mills with his consent and if so, whether the I party is estopped from challenging the validity and legality of his transfer ?

VIII. Whether the reference regarding cancellation of the order dated 7th August 1968 transferring Sri V. Y. Patnekar to Andhra Pradesh Mills does not survive, as alleged by the II Party ?

IX. To what reliefs are the Parties entitled ?

7. The workmen of the West Coast Paper Mills Ltd., Dandeli raised demands that they should not be transferred outside Dandeli, that the transfer of the workman Shri V. Y. Patnekar from Dandeli to Rajmundri was illegal and unjust, that it should be cancelled, and that the system of contract of labour prevailing in the company should be abolished. The Management did not conceed these demands. A failure report was submitted by the Conciliation Officer to the Government. The Government was of opinion that an Industrial Dispute existed between the workmen and the management of West Coast Paper Mills with regard to the points mentioned above and as such referred the dispute for adjudication. The Union put fourth their demands before the Tribunal by contending that the workmen should not be transferred outside Dandeli, that the transfer of Shri V. Y. Patnekar was illegal and

that it should be set aside and the Contract Labour System prevailing in the II party Mills should be abolished. The II party contended that the Contract Labour System was prevailing in the II party mills since the very commencement, that it was working smoothly and that there were no reasons to abolish it. The II party also contended that the workmen of Dandeli Mills were being transferred outside only with consent and accordingly Shri V. Y. Patnekar, workman ticket No. 144 had also been transferred only with his consent to Rajmundri. The Management therefore, requested that the reference be rejected. In addition to the points of dispute, the issues as mentioned above were raised.

8. During the pendancy of the case Shri V. Y. Patnekar filed a memo before the Tribunal on 30th December, 1970 which runs as:—

> "Now, that I have settled my differences with the II party Management and I have been reinstated back. In view of the said settlement I do not wish to proceed further in this case and request this Hon'ble Tribunal to withdraw my complaint."

The Tribunal on the strength of the above mentioned memo passed an order on 30th December 1970 that point No. 3 of the reference and issues 7 and 8 are resolved. With regard to Sri Patnekars' transfer involving point No. 3 of the dispute and issues 7 and 8 the matter is got settled between the parties, Shri V. Y. Patneker has been re-posted to the II party mills.

9. With regard to points 1 and 2 of the dispute concerning the transfer of the workmen outside Dandeli, the I party has withdrawn the demands on 26th August 1972. The I party filed a memo as under :—

> "Items 1 and 2 in the points of dispute relate to transfer of workmen outside Dandeli. It is humbly prayed that the I party may be permitted to withdraw the demands in this regard. The Hon'ble Tribunal may be pleased to pass an order treating the same as not pressed".

We thus find that on 26th August 1972 the I party filed a memo not pressing points 1 to 2 of the dispute.

10. The only point of dispute which now remains for consideration is point No. 3. It relates to the Contract Labour ystem. The I party has contended in its statement of demands

that the Contract Labour System is prevailing in the II party Mills, that it is prejudicial to the interest of the I party and as such it should be abolished. The II party in its counter objected by saying that the contract Labour system was prevailing in the Mills since its commencement, that it was working efficiently and smoothly and as such there were no reasons to abolish the Contract System of Labour.

11. On 15th March 1971 the II party filed an application contending that the Contract Labour (Regulation and Abolition) Act 1970, had been passed, that it had come into force and according to Section 10 of the Act, the Government has discretion to prohibit Contract Labour and as such the Tribunal has no jurisdiction to adjudicate on point No. 4 of the dispute. The I party has orally objected by saying that Section 10 of the Contract Labour Act has no application to the present case and that the Tribunal has jurisdiction to adjudicate on point No. 4 referred by the Government. I have heard both sides with regard to this point.

12. It is not disputed that the System of Contract Labour is existing in the II party Mills. A large number of workmen are employed through the Coptractors by the Mills. Whenever Mills require a number of workmen in a particular section they contact the contractors who supply them the required number of workmen on contract basis. It is also not disptued that the Contract Labour (Regulation and Abolition) Act, 1970 has come into force with effect from 10th February 1971. Section 10 of the Act reads as:

1. Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board, or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment..

2. Before issuing any notification under Sub-s. (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as :—

a) Whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment ;

b) whether it is of perennial nature, that is to say, it i of sufficient duration having regard to the nature of industry, trade business, manufacture or occupation carried on in that establishment;

c) whether it is dote ordinarily through regular workmen in that establishment or an establishment similar thereto;

d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation :—if a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final".

It has been urged in the claim statement that the Contract Labour now being engaged by the II party Mills is with regard to the business and manufacture of the materials concerning the Mills. If we go through the contents of the claim statement of the I party and the counter filed by the II party we find that it has not been disputed that the II party Mills as been engaging Labour through the Contractors with regard to the manufacturing business and that it is of perennial nature, *i. e.* to say that it is of sufficient duration.

13. Section 10 of the Contract Labour (Regulation and Abolition) Act gives power to the Government to prohibit the employment of Contract Labour in any process, operation or other work in any establishment. My attention has also been invited to the decision of the Supreme Court of India reported in 1971 (2) LLJ 567, wherein it has been held that the Tribunal would be having no jurisdiction to adjudicate as to whether the Contract Labour should or should not be abolished, in view of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. The facts leading to this reported decision in brief are these: The Government of Maharashtra referred the dispute by their notification dated 17th April 1967 to the Industrial Tribunal, Maharashtra for adjudication. The points of dispute referred to the abolition of Contract Labour System and the treatment of the employees of the Contractor as regular employees of the company. We are not now concerned with the second aspect namely the treatment of the workmen of the Contractor as regular employees of the company. We are only concerned with the abolition of the contract system. The Industrial Tribunal directed that the contract system prevailing in the company so far as loading and un-loading of the materials was concerned was to be abolished. The management preferred an appeal against the award of the Tribunal. The

Hon'ble Supreme Court of India set aside the Tribunal's award so far as the direction of the abolition of the contract Labour System was concerned, by holding that it had no jurisdiction in view of Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970. Similarly in the present case before me, the Tribunal would be having no jurisdiction to adjudicate as to whether Contract Labour System now prevailing in the II party Mills should or should not be abolished. According to Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 it is for the appropriate Government to prohibit the Contract Labour System. The Tribunal cannot adjudicate on the point as to whether the Contract Labour System should or should not be abolished. I would therefore, find that this Tribunal has no jurisdiction to adjudicate on point No. 4.

15. In view of the above I find, that points 1, 2 and 3 of the dispute are not pressed before me and with regard to point No. 4 this Tribunal has no jurisdiction to adjudicate upon. The issues 1 to 9 do not survive. Hence, the reference is rejected. There shall be no order as to costs.

K. N. PATIL,
Presiding Officer,
Additional Industrial Tribunal,
Bangalore.

ORDER.

Bangalore, dated 19th September 1972.

S.O. 111.—WHEREAS by State Government Order No. FCL 796 LLD 68, dated 7th February 1969, the Industrial Dispute between the Workmen and the Management of West Coast Paper Mills Ltd., Dandeli was referred to Industrial Tribunal, Bangalore for adjudication;

AND, WHEREAS, the Labour Court, has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. FCL 168 LLA 72.]

By Order and in the name of the Governor of Mysore,

ANIRUDHA DESAI,
Under Secretary to Government,
Food, Civil Supplies and Labour Department.